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13 CANTER & ASSOCIATES, LLC and  
14 LAUREATE EDUCATION, INC.

15 UNITED STATES DISTRICT COURT  
16 NORTHERN DISTRICT OF CALIFORNIA

17 SAN JOSE DIVISION

18 CANTER & ASSOCIATES, LLC and  
19 LAUREATE EDUCATION, INC.,

20 Plaintiffs,

21 v.

22 TEACHSCAPE, INC.,

23 Defendant.

Case No. C 07-3225 RS

**[PROPOSED] PROTECTIVE ORDER**

Judge: The Honorable Richard Seeborg

1 Having considered Plaintiffs Canter & Associates, LLC's and Laureate Education,  
2 Inc.'s Motion For Entry Of Protective Order and the papers and argument submitted in  
3 connection therewith, the Court finds that, pursuant to Federal Rule of Civil Procedure  
4 26(c), good cause exists to protect the disclosure of confidential information that will be  
5 produced in the above-captioned litigation.

6 THEREFORE, IT IS HEREBY ORDERED THAT:

7 1. Any party or third-party may designate as "Confidential" or "Highly  
8 Confidential" all or any part of any disclosure, discovery, and other materials produced  
9 and/or served by any party or third-party, including without limitation, documents, things,  
10 electronic data, interrogatory answers, answers to deposition questions, and responses to  
11 requests for admission, which contain sensitive financial, patent, trademark, copyright, trade  
12 secret, marketing, customer, research, or product development information, or any other  
13 non-public information of such a nature as to be protectable under Federal Rule of Civil  
14 Procedure 26(c)(7).

15 2. Confidential and Highly Confidential information, including all information  
16 derived therefrom, and all copies, summaries, abstracts, excerpts, indices, and descriptions  
17 of such material shall be held in confidence by the receiving party, shall be used only by  
18 persons permitted access to it under this Order, and shall not be used for any purpose other  
19 than in connection with this Proceeding, defined herein as the above-captioned action, any  
20 appeal therefrom, and remands thereto. Confidential and Highly Confidential information  
21 shall not be used for any research, development, manufacture, intellectual property—i.e.,  
22 patent, copyright, or trademark—filing or prosecution, financial, commercial, marketing,  
23 business, regulatory, other litigation, or other competitive purpose except as required by  
24 law.

25 3. The designation of material or information as Confidential information by the  
26 producing party constitutes the representation of that party that it reasonably and in good  
27 faith believes that the designated material is not publicly available and/or is available to  
28 members of the public on a limited basis only upon permission of the party or a third-party.

4. The designation of material or information as Highly Confidential information by the producing party constitutes the representation of that party that it reasonably and in good faith believes that the designated material is sensitive financial, patent application, trademark application, copyright application, trade secret, marketing, customer, research, manufacture, regulatory, commercial, business, or product development information, including sensitive business information relating to licensing, projected future sales, pricing, business strategies, business arrangements, volumes, revenues, costs or profits for master's degree or graduate course programs.

## Designation Procedure

5. Any document or thing that constitutes or contains Confidential or Highly Confidential information shall be stamped with the legend “CONFIDENTIAL,” “CONFIDENTIAL SUBJECT TO PROTECTIVE ORDER,” “HIGHLY CONFIDENTIAL – ATTORNEYS EYES ONLY” or “HIGHLY CONFIDENTIAL – ATTORNEYS EYES ONLY – SUBJECT TO PROTECTIVE ORDER” as reasonably appropriate by the party or third-party producing it. Anything that cannot be so marked on its face shall be marked by placing the appropriate legend on a container or package in which the thing is produced or on a tag attached thereto. Each page of each document and each thing produced pursuant to discovery in this action shall bear a unique identifying (Bates) number with a prefix identifying the party or third-party producing it.

6. Any material provided for inspection in this Proceeding is to be treated by the receiving party as Highly Confidential information pending the copying and delivery of any copies of the same by the producing party. After production, the information in such documents or things will be treated consistent with any legend produced on each document or thing. Inspection of documents or things by any party shall be conducted only by outside counsel eligible under paragraph 10(a) below.

7. Any disclosure, written interrogatories, requests for admission, responses thereto, or any testimony adduced at a deposition upon written questions that constitutes or contains Confidential or Highly Confidential information shall be labeled or marked with

1 the legend “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER” or “HIGHLY  
2 CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER” as appropriate by the party  
3 serving the disclosure, discovery request or response, or providing the testimony on the first  
4 page of that document near the caption. Another label with the appropriate legend shall be  
5 set forth at the beginning of every disclosure section, discovery request or response, or  
6 testimony in response to a written question, that specifically contains Confidential or Highly  
7 Confidential information, so that disclosures, discovery requests or responses, or testimony  
8 that do not contain Confidential or Highly Confidential information are not subject to this  
9 Order.

10 8. Deposition testimony taken in connection with this Proceeding temporarily  
11 will be designated as Highly Confidential information for up to thirty (30) calendar days  
12 from both parties’ receipt of a transcript of the deposition, and the parties agree to mark the  
13 first page of the deposition transcript with the legend “HIGHLY CONFIDENTIAL –  
14 SUBJECT TO PROTECTIVE ORDER” in accord with this temporary designation. Within  
15 thirty (30) calendar days of such receipt, parties and third-parties must designate as  
16 Confidential or Highly Confidential specific testimony, by transcript line and page number,  
17 in writing and deliver the designations, if any, to the parties, whereupon each party shall  
18 attach a copy of such written designation to the face of the transcript and each copy thereof  
19 in that party’s possession, custody, or control. Otherwise the parties may treat the  
20 testimony as no longer subject to this Order. A deponent may review the transcript of his or  
21 her deposition at any time.

22 9. Documents and things produced without a legend designating the material  
23 Confidential or Highly Confidential shall not be subject to this Protective Order unless  
24 otherwise agreed by the parties or ordered by the Court, or otherwise designated  
25 Confidential or Highly Confidential in accordance with the provisions of paragraphs 27-28  
26 of this Order.

27 **Access to Confidential Information**

28 10. Highly Confidential information may be disclosed only to the following

1 Qualified Persons:

2 a. Outside counsel retained by the receiving party as counsel for this  
3 Proceeding, the paralegals, assistants, and employees of the respective law firms of such  
4 outside counsel to the extent such persons' duties and responsibilities require access to  
5 material designated Confidential or Highly Confidential and have an express agreement  
6 with their respective law firms to maintain the confidentiality of their work;

7 b. One in-house counsel for each party provided that the attorney is in  
8 compliance with paragraph 13.

9 c. Any independent outside consultant or expert to the parties that is  
10 assisting outside counsel in connection with this Proceeding, is not a current employee of  
11 any of the parties in the litigation, and is in compliance with the requirements of paragraphs  
12 14-15 herein;

13 d. the Court and any members of its staff to whom it is necessary to  
14 disclose Confidential or Highly Confidential information for the purpose of assisting the  
15 Court in this Proceeding and stenographic employees, court reporters, typists, interpreters,  
16 and translators for the sole purpose of recording, transcribing, translating or interpreting  
17 testimony, documents, or other information relating to this Proceeding;

18 e. any person who prepared a particular document or thing, who is listed  
19 on the document as a sender or recipient of the document, or who otherwise had access to or  
20 knowledge of the Confidential or Highly Confidential information disclosed in the  
21 particular document or thing, but the disclosure shall be limited to the specific Confidential  
22 or Highly Confidential information disclosed in the particular document or thing;

23 f. any present officer, director, or employee of the party or third-party  
24 who produced the Confidential or Highly Confidential information;

25 g. any person to whom the producing party or third-party agrees  
26 Confidential or Highly Confidential or information may be disclosed; and

27 h. independent litigation support service personnel, litigation consultants,  
28 outside exhibit preparation companies, or litigation study groups retained by a party for

1 litigation support with whom such outside counsel work in connection with this Proceeding  
2 to the extent such persons have an express agreement with outside counsel to maintain the  
3 confidentiality of their work, and provided that such personnel are regularly engaged in the  
4 provision of such services, and are not engaged in the research, development, manufacture,  
5 marketing, or sale of master's degree and graduate course programs in the field of  
6 education;

7 i. outside copying services.

8 11. Confidential information may be disclosed only to the following Qualified  
9 Persons:

10 a. any of the persons entitled to receive Highly Confidential information  
11 identified in paragraph 10 above; and

12 b. one present officer of each party provided that the officer is in  
13 compliance with paragraph 17.

14 12. All Confidential and Highly Confidential information and any copies or  
15 extracts thereof designated by another party or third-party shall be retained by the receiving  
16 party, including Qualified persons associated with the receiving party, in a secure and safe  
17 area and shall exercise due and proper care with respect to the storage, custody, use and/or  
18 dissemination of such material

19 13. A party desiring to disclose another party's Confidential or Highly  
20 Confidential information to in-house counsel under paragraph 10(b) may do so provided  
21 that:

22 (a) The in-house counsel is a licensed attorney;

23 (b) The in-house counsel agrees that after exposure to another parties'  
24 confidential information under this protective order, and until one (1) year after the  
25 conclusion of this Proceeding, the attorney will not to partake in competitive  
26 decisionmaking – i.e., advice and participation in any or all of the party's decisions (pricing,  
27 sales, marketing, product design, and regulatory) regarding that party's master's degree and  
28 graduate course programs in the field of education being licensed to and/or offered through

1 universities or other educational institutions in the United States – with the exception of  
2 decisions made in furtherance of the conduct or settlement of this Proceeding; and

3 (c) before any disclosure the party shall provide to the attorney a copy of  
4 this Order, which the attorney shall read and upon reading shall sign a Certification in the  
5 form annexed hereto as Exhibit A, and serve (by hand delivery, courier, e-mail, or facsimile  
6 transmission) a copy of said Certification upon counsel for the producing parties.

7 14. A party desiring to disclose another party's Confidential or Highly  
8 Confidential information to any outside consultant or expert under paragraph 10(c) before  
9 any disclosure shall:

10 a. provide to such person a copy of this Order, which he or she shall read  
11 and upon reading shall sign a Certification in the form annexed hereto as Exhibit A;

12 b. obtain from such person a copy of such person's Certification, a  
13 resume (curriculum vitae), and the following information, (i) a list of companies for whom  
14 such person has consulted in any capacity within the last year, (ii) a list of any other cases in  
15 which such person has testified as an expert at trial or by deposition within the preceding  
16 four (4) years; and a list of all publications authored by such person within the preceding ten  
17 (10) years;

18 c. for every such person, serve (by hand delivery, courier, e-mail, or  
19 facsimile transmission) a copy of said Certification, resume (curriculum vitae) and  
20 information described in subparagraph 14(b) upon counsel for the producing parties.

21 15. Upon receipt of a Certification and resume (curriculum vitae) and information  
22 described in subparagraph 14(b) of an outside consultant or expert, the producing party shall  
23 then have ten (10) court days to serve (by hand delivery, same day courier, e-mail, or  
24 facsimile transmission) a written objection to the proposed disclosure of its Highly  
25 Confidential and/or Confidential information, which shall state with specificity the  
26 reason(s) for such objection. If counsel for the producing party objects within ten (10) court  
27 days, there shall be no disclosure to such consultant or expert except by further order of the  
28 Court pursuant to a motion brought by the producing party within seven (7) court days of



1 the service of the objection. On any motion brought pursuant to this paragraph, the  
2 producing party shall bear the burden of showing why disclosure to that consultant or expert  
3 should be precluded. Failure to timely object and to timely file a motion with the Court  
4 operates as a waiver of the objection by the producing party and the consultant or expert  
5 will be a Qualified Person with access to the producing party's Confidential or Highly  
6 Confidential information.

7 16. If counsel wish to disclose material designated Confidential or Highly  
8 Confidential to the persons described in subparagraphs 10(g)-(i) above, counsel shall first  
9 obtain a signed Certification in the form of the annexed Exhibit A. The Certification shall  
10 be signed by the company, firm, or group, or solo practitioner retained by the party, and a  
11 single Certification by the company, firm, group, or solo practitioner shall be sufficient to  
12 cover all employees or other individuals paid by the company, firm, or group. Counsel  
13 retaining the persons described in subparagraphs 10(g)-(i) shall retain the original of each  
14 such signed Certification. Service of the Certification shall not be required.

15 17. A party desiring to disclose another party's Confidential information to its  
16 present officer under subparagraph 11(b) before any disclosure the party shall provide to the  
17 officer a copy of this Order, which the officer shall read and upon reading shall sign a  
18 Certification in the form annexed hereto as Exhibit B, and serve (by hand delivery, courier,  
19 e-mail, or facsimile transmission) a copy of said Certification upon counsel for the  
20 producing parties.

21 18. Only Qualified Persons, the deponent, and his or her attorney (if any), shall be  
22 allowed to attend any portion of a deposition in which Confidential or Highly Confidential  
23 information is used or elicited from the deponent. Counsel for the designating party may  
24 also request that all persons other than the witness, the court reporter, those individuals  
25 specified in paragraph 10, and counsel for the witness (if a third-party witness) leave the  
26 deposition room during any portion of a deposition which inquires into matters deemed  
27 Highly Confidential by a party or third-party. Counsel for the designating party may also  
28 request that all persons other than the witness, the court reporter, those individuals specified



1 in paragraphs 10-11, and counsel for the witness (if a third-party witness) leave the  
2 deposition room during any portion of a deposition which inquires into matters deemed  
3 Confidential by a party or third-party. The failure of individuals other than those specified  
4 in the previous two sentences to leave the deposition room during any portion of the  
5 deposition which inquires into matters deemed Confidential or Highly Confidential by a  
6 party or third-party shall constitute justification for counsel to instruct the witness that he or  
7 she shall not answer the question(s) posed.

8 19. This Order shall not limit a party's examination, at a deposition, hearing, or at  
9 trial, of persons who are not authorized to receive Confidential or Highly Confidential  
10 information under the terms of this Order, so long as such examination concerns  
11 Confidential or Highly Confidential information that the witness authored, received, or  
12 previously had access to or knowledge of, as demonstrated by the Confidential or Highly  
13 Confidential information itself or by foundation testimony during a deposition, hearing or  
14 trial. This Order shall not prevent counsel from examining a witness in a good-faith effort  
15 to determine whether he or she authored, received, or previously had access to or  
16 knowledge of Confidential or Highly Confidential information.

17 20. Nothing shall prevent disclosure beyond the terms of this Order if the party  
18 designating the material as Confidential or Highly Confidential consents in writing to such  
19 disclosure, or if the Court, after reasonable written notice to all affected parties, orders such  
20 disclosure.

21 21. Nothing contained in this Order shall preclude any party from using its own  
22 Confidential or Highly Confidential information in any manner it sees fit, without prior  
23 consent of any party or the Court.

24 22. Notwithstanding such designation, Confidential or Highly Confidential  
25 information does not include information obtained independent of this Proceeding as to  
26 which no obligation of confidentiality applies. Accordingly, nothing in this Order shall  
27 prevent any person, including a Qualified Person, from making use of any information that  
28 is designated Confidential or Highly Confidential if such information:

1 a. was lawfully in his or her possession prior to receipt under the  
2 provisions of this Order;

3 b. was or becomes available to the public through no fault of a receiving  
4 party; or

5 c. was or is obtained from a source not under an obligation of secrecy to  
6 the producing party.

7 23. Nothing in this Order shall restrict any party's outside or in-house counsel  
8 from rendering advice to its clients with respect to this Proceeding and, in the course  
9 thereof, relying upon Highly Confidential information, provided that in rendering such  
10 advice, counsel shall not disclose any other party's Highly Confidential information other  
11 than in a manner provided for in this Order.

12 **Challenging Designation of Confidential Information**

13 24. A party shall not be obligated to challenge the propriety of a Confidential or  
14 Highly Confidential information (or change in designation) at the time the designation is  
15 made, and a failure to do so shall not preclude a subsequent challenge thereto.

16 25. In the event that a party disagrees at any time with a Confidential or Highly  
17 Confidential information designation made by another party or a third-party, the following  
18 procedure shall be used:

19 (a) The party seeking such removal shall serve the producing party or  
20 third-party written notice thereof (by hand delivery, courier, e-mail, or facsimile  
21 transmission), specifying the documents, things, or information for which such removal is  
22 sought and the reasons for the request. The producing party or third-party shall have ten  
23 (10) court days after service of the notice within which to object in writing to the removal of  
24 protection afforded by this Order and specifying why protection under this Order is  
25 appropriate. Failure to object within the requisite time limit is deemed a waiver of any  
26 claim to protection for that specific document, thing, or information designated as  
27 Confidential Information under this Order.

28 (b) If, after service of the objection and conferring in good faith, the

1 parties, or the party and third-party, cannot reach agreement concerning the matter, then the  
2 party seeking the removal of protection for the designated Confidential or Highly  
3 Confidential information shall file and serve a motion with the Court (in compliance with  
4 Civil Local Rule 79-5, if applicable); the designated material shall continue to be treated as  
5 Confidential or Highly Confidential information until the issue is resolved by Order of this  
6 Court or by agreement of the parties or the party and third-party.

7 (c) On any motions arising out of the designation of any material as  
8 Confidential Information under this Order, the burden of justifying the designation shall lie  
9 with the producing party or third-party.

10 **Inadvertent Production/Use of Confidential Information and Changes in Designation**

11 26. Inadvertent production of any document or information without a designation  
12 of Confidential or Highly Confidential information will not be deemed to waive a later  
13 claim as to its confidential nature or stop the producing party from designating said  
14 document or information as Confidential or Highly Confidential information at a later date.

15 27. Any producing party may change a designation to Confidential or Highly  
16 Confidential information (or withdraw a designation) regarding any material that it has  
17 produced, provided, however, that such change in designation shall be effective only as of  
18 the date of such change. Such change in designation (or withdrawal) shall be accomplished  
19 by notifying counsel for each party in writing of such change in designation (or  
20 withdrawal).

21 28. Upon receipt of any written change in designation per paragraph 27 counsel of  
22 record shall: (i) not make any further disclosure or communication of such newly  
23 designated material except as provided for in this Order; (ii) take reasonable steps to notify  
24 any persons known to have possession of any material with the original designation of the  
25 effect of such a change in designation under this Order; and (iii) promptly retrieve all copies  
26 and transcriptions of such originally designated material from any persons known to have  
27 possession of any such originally designated material who are not Qualified Persons under  
28 paragraphs 10 or 11 above in light of the change of designation to the extent practicable.

1 Properly marked documents shall be promptly provided by the producing party of any such  
2 newly designated material.

3 29. Under no circumstances shall a party or third-party change or remove the  
4 designation of Confidential or Highly Confidential information, or object to such change or  
5 removal, to vex or harass another party. No such change in designation shall be effective to  
6 limit another party's contemplated use of the designated material in question at any  
7 deposition, hearing, or trial if the change in designation is made less than seventy-two (72)  
8 hours prior to the scheduled commencement of such deposition, hearing, or trial.

9 30. If Confidential or Highly Confidential information is used during depositions  
10 in contravention of other provisions of this Order, it shall not lose its confidential status  
11 through such use, and counsel shall exercise their best efforts and take all steps reasonably  
12 required to protect its confidentiality during and subsequent to such use. If Confidential or  
13 Highly Confidential information is disclosed to a deposition witness in contravention of  
14 other provisions of this Order, and the witness has testified concerning that information, the  
15 witness may be cross-examined with respect to the document(s) or information disclosed  
16 during that deposition.

17 31. If Confidential or Highly Confidential information is disclosed to any person  
18 other than in the manner authorized by this Order, the party responsible for the disclosure  
19 shall within five (5) court days of learning of such disclosure inform the producing party of  
20 all pertinent facts relating to such disclosure and shall use reasonable efforts to obtain the  
21 prompt return of any such Confidential or Highly Confidential information and to bind each  
22 unauthorized person or party who received such information to the terms of this Protective  
23 Order by providing a copy of this Protective Order to such unauthorized person or party and  
24 requesting such unauthorized person or party to sign the Certification attached hereto as  
25 Exhibit A. The requirements set forth in this paragraph shall not prevent the producing  
26 party from applying to the Court for further or additional relief.

**Inadvertent Production/Use of Privileged Information**

32. If information subject to a claim of attorney-client privilege, attorney work product immunity or other legal privilege protecting information from discovery is inadvertently produced in any way, such production shall not prejudice or otherwise constitute a waiver (subject matter or otherwise) of, or estoppel as to, any claim of privilege, work product immunity, or other ground for withholding production to which the producing party or other person otherwise would be entitled. If a written claim of inadvertent production is made by a producing party to a receiving party pursuant to this paragraph with respect to information or a document supplied to a receiving party, upon the receiving party's receipt of such written notification of the producing party's discovery of inadvertent production of such information or document, the receiving party shall:

(a) not make any further copies or other reproductions or transcriptions of the inadvertently disclosed information or document; and

(b) destroy or return to the supplying party every original and every copy, reproduction, or transcription of all such inadvertently produced information or documents possessed by the receiving party and by those persons to whom the receiving party may have disclosed such information.

33. However, recognizing the need for the parties to prepare for their cases based on the discovery that is produced, if any information, document, or tangible thing is used in a court hearing, deposition, as an exhibit to a motion, is referenced in an expert report or pretrial order, or is otherwise used openly in the case, any claim of inadvertent production must be made within ten (10) court days after such use.

**Party's Disclosure of Confidential Information of Nonparties  
or Pursuant To Subpoena**

34. A party may temporarily withhold production of otherwise discoverable information sought in a discovery request (e.g., interrogatory, request for production, request for admission) if the party is under an obligation to a third-party not to disclose such

1 information. In such an event, except for information subject to a protective order or  
2 confidentiality order by another court, such party shall:

3 (a) timely serve a written objection to the production of the information in  
4 question on the basis of its obligation to a third-party not to disclose such information;

5 (b) promptly provide to the third-party whose confidentiality interests are  
6 implicated (i) notice of the pending request to disclose the information in question, and (ii) a  
7 copy of this Protective Order;

8 (c) within thirty (30) days of serving its response to the request for the  
9 discoverable information, designate it as Confidential or Highly Confidential information  
10 and produce it in compliance with this Order, unless that third-party or the party, within the  
11 thirty (30) days of the party serving its response to the request, moves for or obtains from  
12 this Court a protective order precluding such production.

13 35. Nothing in paragraph 34 shall prevent a party from withholding information  
14 beyond the thirty (30) days based on its timely asserted written objection other than any  
15 non-disclosure obligation to a third-party, or during the pendency of a motion to compel  
16 seeking to resolve these other written objections. The withholding of the information on  
17 bases other than an obligation of non-disclosure to a third-party shall not extend the  
18 aforementioned period by which the party or third-party must seek a protective order  
19 specifically with respect to the non-disclosure obligation to the third-party.

20 36. Any party that is served with a subpoena or other notice compelling the  
21 production of any Confidential or Highly Confidential information produced by the other  
22 party or a third-party is obligated to give prompt telephonic and written notice (by hand  
23 delivery, courier or facsimile transmission) to that original producing party of such  
24 subpoena or other notice. In any event, such notice shall be given within five (5) court days  
25 of service of the subpoena or other notice. If the original producing party takes steps to  
26 oppose the subpoena, then the party served with the subpoena shall not disclose the  
27 pertinent information until the Court has resolved the issue. Absent Court order, production  
28 or disclosure shall not be made before notice is given to the original producing party and the

1 original producing party has had at least ten (10) court days to react after receiving such  
2 notice. Upon receiving such notice, the original producing party shall bear the burden to  
3 oppose, if it deems appropriate, the subpoena on grounds of confidentiality.

4 **Use of Confidential Information in Filings and in Open Court**

5 37. Nothing herein shall be construed to affect in any manner the admissibility at  
6 trial of any document, testimony, or other evidence.

7 38. Without written permission from the designating party or a court order  
8 secured after appropriate notice to all interested persons, a receiving party may not file in  
9 the public record in this action any Confidential or Highly Confidential information,  
10 including quotations or other parts thereof, of the designating party. A designating party  
11 may file in the public record any Confidential or Highly Confidential information is has  
12 designated and such filing, unless inadvertent, will result in that information no longer  
13 being subject to this Order.

14 39. A party that seeks to file under seal any Confidential or Highly Confidential  
15 information must comply with Civil Local Rule 79-5. In addition, the party should indicate  
16 the source and level of confidentiality on the first page of the pleading or other document to  
17 be filed under seal in the form "SUBMITTED UNDER SEAL – [HIGHLY]  
18 CONFIDENTIAL INFORMATION OF [DESIGNATING PARTY]" so as to enable the  
19 parties to identify the appropriate Qualified Persons that may view the filing.

20 40. To the extent that a receiving party (or a witness called by a receiving party)  
21 contemplates using Confidential or Highly Confidential information, which was produced  
22 by another party, at trial or a hearing in open court in this Proceeding, the receiving party  
23 shall have the obligation to provide notice (either in writing or in open court) to the  
24 producing party of its intent. The producing party shall have an opportunity to respond to  
25 that notice before any of its Confidential or Highly Confidential information may be used  
26 by any other party at trial or a hearing in open court. In the event that any Confidential or  
27 Highly Confidential information is used at trial or hearing in open court in this Proceeding  
28 because a request to conduct the trial or hearing in closed court or in camera was not



1 granted, the Confidential or Highly Confidential information shall remain subject to this  
2 Order.

3 **Disposition of Confidential Materials upon Conclusion of Proceeding**

4 41. Upon the conclusion of this Proceeding, at the written request and option of  
5 the producing party, all Confidential or Highly Confidential information and any and all  
6 copies and transcriptions thereof, shall be destroyed or returned within ninety (90) calendar  
7 days to the producing party, provided, however, that outside counsel may retain all  
8 documents and things that contain or reflect their attorney work product (e.g., notes,  
9 memoranda, drafts of pleadings, deposition summaries, document review summaries,  
10 documents reviewed in preparation for depositions, hearings, or trial whether introduced or  
11 not), all correspondence, all pleadings, all deposition transcripts, all expert reports, all  
12 deposition, hearing and trial exhibits, and all court filed documents even though they  
13 contain Confidential or Highly Confidential information, but such retained work product  
14 and documents shall remain subject to the terms of this Order. Accordingly, upon final  
15 termination of this action, no one other than outside counsel shall retain any information  
16 designated Confidential or Highly Confidential obtained in the course of this Proceeding.  
17 At the written request of the producing party, any person or entity having received  
18 recordings, notes, memoranda, summaries or other written materials, and all copies thereof,  
19 relating to or containing its Confidential or Highly Confidential information shall deliver to  
20 the producing party a declaration confirming that reasonable efforts have been made to  
21 assure that all such Confidential or Highly Confidential information and any copies thereof,  
22 any and all records, notes, memoranda, summaries or other written material regarding the  
23 Confidential or Highly Confidential information (except for attorney work product and  
24 documents permitted to be retained by outside counsel as stated above), have been  
25 destroyed or delivered in accordance with the terms of this Order.

26 **Miscellaneous Provisions**

27 42. This Order shall be binding upon the parties to this Proceeding and signatories  
28 to the Certification, including their successor(s) and assigns, and their respective attorneys,

1 agents, representatives, officers and employees.

2 43. This Order shall apply to all information and material produced in this  
3 Proceeding, including all previously produced information and material prior to the  
4 execution of this Order by the Court.

5 44. Unless the parties stipulate otherwise, evidence of the existence or  
6 nonexistence of a designation under this Order shall not be admissible as proof of a claim or  
7 defense in this Proceeding and in no way constitutes an admission by any party that any  
8 information designated pursuant to this Order is or is not proprietary, confidential, and/or a  
9 trade secret.

10 45. By written agreement of the parties, or upon motion and order of the Court,  
11 the terms of this Order may be amended or modified.

12 46. This Order shall continue in force until amended or superseded by express  
13 order of the Court. This Order shall survive termination of this Proceeding, including any  
14 final judgment, appeal, or settlement to the extent the Confidential or Highly Confidential  
15 information is not or does not become known to the public.

16 47. Nothing in this Order shall prejudice the right of any party to oppose  
17 production of any information for lack of relevance, privilege, or any ground other than  
18 confidentiality.

19 48. In the event that a new party is added, substituted, or brought in, this Order  
20 will be binding on and inure to the benefit of the new party, subject to the right of the new  
21 party to seek relief from or modification of this Order.

22 49. The entry of this Order does not prevent any party from seeking a further  
23 order of this Court pursuant to Federal Rule of Civil Procedure 26(c).

24 IT IS SO ORDERED.

25 Dated:

26  
27 \_\_\_\_\_  
The Honorable Richard Seeborg  
UNITED STATES MAGISTRATE JUDGE  
28

EXHIBIT A

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

CANTER & ASSOCIATES, LLC, and  
LAUREATE EDUCATION, INC.,

Plaintiffs,

v.

TEACHSCAPE, INC.,

Defendant.

Case No. C 07-3225 RS

**CERTIFICATION REGARDING  
PROTECTIVE ORDER (FOR IN-  
HOUSE COUNSEL)**

Judge: The Honorable Richard Seeborg

I, \_\_\_\_\_, declare:

1. My present address is \_\_\_\_\_.

My present occupation is \_\_\_\_\_.

My present employer is \_\_\_\_\_, which is a party in this litigation.

2. I agree that after exposure to another party's or a third-party's confidential information under the Protective Order in this Proceeding, and until one (1) year after the conclusion of this Proceeding, I will not to partake in competitive decisionmaking – i.e., advice and participation in any or all of the party's decisions (pricing, sales, marketing, product design, and regulatory) regarding that party's master's degree and graduate course programs in the field of education – with the exception of decisions made in furtherance of the conduct or settlement of this Proceeding.

3. I have received a copy of the Protective Order in this action. I have carefully read and understand its provisions. I consent to the jurisdiction of the United States District

1 Court for the Northern District of California solely for the purpose of enforcing the  
2 Protective Order.

3 4. I will comply with all provisions of the Protective Order.  
4 I will hold in confidence, will not disclose to anyone other than those persons specifically  
5 authorized by the Protective Order, and will use only for purposes of this action, any  
6 information, documents or things designated as containing Confidential or Highly  
7 Confidential information, including the substance and any copy, summary, abstract, excerpt,  
8 index or description of such material, that is disclosed to me as well as any knowledge or  
9 information derived from any of the above mentioned items which I receive in this action,  
10 except as allowed in accordance with the Protective Order. I will take reasonable steps to  
11 restrict access to any Confidential or Highly Confidential information to only those persons  
12 authorized by the Protective Order to have such access.

13 5. I will return all materials containing Confidential or Highly Confidential  
14 information that come into my possession, and all documents and things that I have  
15 prepared relating thereto, to counsel for the party by whom I am employed when requested  
16 to do so.

17 6. I understand that if I violate the provisions of the Protective Order, I will be  
18 subject to sanctions by the Court and that any or all of the parties or third-parties that  
19 designate information pursuant to the Protective Order may assert other remedies against  
20 me. I hereby submit to the jurisdiction of this Court for the purpose of enforcement of the  
21 Protective Order in this action.

22 7. I declare under penalty of perjury under the laws of the United States of  
23 America that the foregoing is true and correct.

24 8. Executed this \_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_  
25 \_\_\_\_\_.

EXHIBIT B

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

CANTER & ASSOCIATES, LLC and  
LAUREATE EDUCATION, INC.,

Plaintiffs,

v.

TEACHSCAPE, INC.,

Defendant.

Case No. C 07-3225 RS

**CERTIFICATION REGARDING  
PROTECTIVE ORDER (FOR  
EXPERTS AND CONSULTANTS)**

Judge: The Honorable Richard Seeborg

I, \_\_\_\_\_, declare:

1. My present address is \_\_\_\_\_.

My present occupation is \_\_\_\_\_.

I am not a current employee of any of the parties in the litigation. My present employer, if any, is \_\_\_\_\_, and the address of my present employer is \_\_\_\_\_.

2. I have received a copy of the Protective Order in this action. I have carefully read and understand its provisions. I consent to the jurisdiction of the United States District Court for the Northern District of California solely for the purpose of enforcing the Protective Order.

3. I will comply with all provisions of the Protective Order. I will hold in confidence, will not disclose to anyone other than those persons specifically authorized by the Protective Order, and will use only for purposes of this action, any

1 information, documents or things designated as containing Confidential or Highly  
2 Confidential information, including the substance and any copy, summary, abstract, excerpt,  
3 index or description of such material, that is disclosed to me as well as any knowledge or  
4 information derived from any of the above mentioned items which I receive in this action,  
5 except as allowed in accordance with the Protective Order. I will take reasonable steps to  
6 restrict access to any Confidential or Highly Confidential information to only those persons  
7 authorized by the Protective Order to have such access.

8 4. I will return all materials containing Confidential or Highly Confidential  
9 information that come into my possession, and all documents and things that I have  
10 prepared relating thereto, to counsel for the party by whom I am employed or retained, or  
11 from whom I received such material when requested to do so.

12 5. I understand that if I violate the provisions of the Protective Order, I will be  
13 subject to sanctions by the Court and that any or all of the parties or third-parties that  
14 designate information pursuant to the Protective Order may assert other remedies against  
15 me. I hereby submit to the jurisdiction of this Court for the purpose of enforcement of the  
16 Protective Order in this action.

17 6. I declare under penalty of perjury under the laws of the United States of  
18 America that the foregoing is true and correct.

19 7. Executed this \_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_  
20 \_\_\_\_\_.

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EXHIBIT C

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

CANTER & ASSOCIATES, LLC and  
LAUREATE EDUCATION, INC.,

Plaintiffs,

v.

TEACHSCAPE, INC.,

Defendant.

Case No. C 07-3225 RS

**CERTIFICATION REGARDING  
PROTECTIVE ORDER (FOR PARTY  
OFFICERS)**

Judge: The Honorable Richard Seeborg

I, \_\_\_\_\_, declare:

1. My present address is \_\_\_\_\_.

My present occupation is \_\_\_\_\_.

My present employer is \_\_\_\_\_, which is a party in this litigation.

2. I have received a copy of the Protective Order in this action. I have carefully read and understand its provisions. I consent to the jurisdiction of the United States District Court for the Northern District of California solely for the purpose of enforcing the Protective Order.

3. I will comply with all provisions of the Protective Order. I will hold in confidence, will not disclose to anyone other than those persons specifically authorized by the Protective Order, and will use only for purposes of this action, any information, documents or things designated as containing Confidential information, including the substance and any copy, summary, abstract, excerpt, index or description of



1 such material, that is disclosed to me as well as any knowledge or information derived from  
2 any of the above mentioned items which I receive in this action, except as allowed in  
3 accordance with the Protective Order. I will take reasonable steps to restrict access to any  
4 Confidential information to only those persons authorized by the Protective Order to have  
5 such access.

6 5. I will return all materials containing Confidential information that come into  
7 my possession, and all documents and things that I have prepared relating thereto, to  
8 counsel for the party by whom I am employed when requested to do so.

9 6. I understand that if I violate the provisions of the Protective Order, I will be  
10 subject to sanctions by the Court and that any or all of the parties or third-parties that  
11 designate information pursuant to the Protective Order may assert other remedies against  
12 me. I hereby submit to the jurisdiction of this Court for the purpose of enforcement of the  
13 Protective Order in this action.

14 7. I declare under penalty of perjury under the laws of the United States of  
15 America that the foregoing is true and correct.

16 8. Executed this \_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_  
17 \_\_\_\_\_.

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